

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PHILIP STEWART, Personal Representative
of the ESTATE OF LADONNA STEWART,
deceased,

Plaintiff,

vs.

STEVEN RAY HIGGINS and ERIE
INSURANCE COMPANY,

Defendants.

CIVIL ACTION NO.: 3:13-cv-7762

Removed from the Circuit Court of
Mason County, West Virginia, at
Civil Action No.: 13-C-39

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

NOW COMES the Defendant, Erie Insurance Property & Casualty Company, Inc. (incorrectly sued as Erie Insurance Company), by and through undersigned counsel, and removes the above-captioned matter pursuant to 28 U.S.C. §§1332 and 1441 *et seq.*, from the Circuit Court of Mason County, West Virginia, where it has been assigned Civil Action No. 13-C-39, and in support thereof, states as follows:

1. Plaintiff initiated this lawsuit in the Circuit Court of Mason County, West Virginia, by filing a Summons and Complaint on or about March 11, 2013, naming Erie Insurance Company and Steven Ray Higgins as defendants. *See Copy of Summons, Complaint and Complete State Court File, all attached hereto as Exhibit 1.* In the Complaint, Plaintiff claims damages for the wrongful death of LaDonna Stewart relative to a May 3, 2011, motor vehicle accident which took place on West Virginia Route 62, West Columbia, Mason County, West Virginia. *Id.* As indicated in Plaintiff's Complaint, Plaintiff is also pursuing an uninsured motorist claim against Defendant Erie Insurance Property & Casualty Company, Inc. *Id.*

2. The Circuit Court of Mason County, West Virginia, is within the jurisdiction of the United States District Court for the Southern District of West Virginia.

3. According to the Complaint, Plaintiff is a resident of Mason County, West Virginia. Defendant Erie Insurance Property & Casualty Company, Inc. is a Pennsylvania Corporation with its principal place of business located in Pennsylvania. Defendant Steven Ray Higgins is a resident of Meigs County, Ohio.

4. In Plaintiff's Complaint, it is alleged that the death of LaDonna Stewart has resulted in "sorrow, mental anguish and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent." *See Complaint, Paragraph 6.* Plaintiff is also claiming loss of income of not less than \$1,500,000.00, and funeral expenses of not less than \$12,575.63. *Id.* Accordingly, the amount in controversy is currently believed to exceed \$75,000, exclusive of interest and costs.

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441 inasmuch as diversity exists, no defendant is a citizen of the State of West Virginia wherein the Complaint was filed, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

6. Defendant Erie Insurance Property & Casualty Company, Inc. has filed this Notice of Removal within thirty (30) days of their receipt of the Complaint per 28 U.S.C. §1446.

7. Concurrent with the filing of this Notice of Removal, Defendant has filed a *Notification of Removal* with the Clerk of the Circuit Court of Mason County, West Virginia, advising the Clerk that Defendant Erie Insurance Property & Casualty, Inc. has removed this action to the United States District Court for the Southern District of West Virginia.

8. In filing this Notice of Removal, Defendant Erie Insurance Property & Casualty Company, Inc. does not waive any motion or affirmative defenses it may assert in this action.

WHEREFORE, Defendant Erie Insurance Property & Casualty Company, Inc. prays that this case be removed from the Circuit Court of Mason County, West Virginia to the United States District Court for the Southern District of West Virginia.

Respectfully submitted by,

/s/ P. Joseph Craycraft

P. Joseph Craycraft, Esq. (WV #7920)

Swartz Campbell, LLC

1233 Main Street, Suite 1000

Wheeling, WV 26003

Phone: (304) 232-2790

Fax: (304) 232-2659

Counsel for Erie Insurance Property &
Casualty Company, Inc. (incorrectly sued as
Erie Insurance Company)